

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Federal-State Joint Board on)
 Universal Service)

CC Docket No. 96-45

Forward-Looking Mechanism)
 for High Cost Support for)
 Non-Rural LECs)

CC Docket No. 97-160

REPLY COMMENTS OF TXU COMMUNICATIONS TELEPHONE COMPANY

TXU Communications Telephone Company (TXU Communications), by its attorneys, hereby responds to the comments filed in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding concerning modifications to the procedures for distinguishing rural and non-rural companies for the purpose of determining federal universal service support.

I. LOCAL EXCHANGE CARRIER OPERATING ENTITY

In the FNPRM, the Commission requests comment on whether the term "local exchange carrier operating entity" used in Section 153(37) refers to a local exchange carrier (LEC) at the study area level or at the holding company level. TXU Communications supports the comments

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of the Rural Telephone Coalition (the RTC)¹ and Citizens Utilities Company (Citizens)² that it means neither a “holding company” nor a “study area.” As stated by Citizens, operating entity and study areas are not synonymous, as an operating entity may have more than one study area. In addition, as demonstrated by the RTC, the Act and the Commission distinguish between the separate companies that carry out the telephone business of carriers and the common owner of such companies, namely, the holding company. Moreover, the Commission need only look to the plain language of the Act to conclude that the meaning of the phrase “local exchange carrier operating entity” refers to individual operating companies, which are readily identifiable as the entities certificated by the states to provide local service. Thus, the Commission should find that “local exchange carrier operating entity” means the individual operating companies.

II. DEFINING “COMMUNITIES OF MORE THAN 50,000”

The commenters support the use of Census Bureau data to determine whether a carrier serves “communities of more than 50,000.” TXU Communications also supports the use of Census Bureau data, if it reflects the geographic area covered by a carrier’s facilities. As demonstrated by TXU Communications, the definition of “communities of more than 50,000” should be applied to further the Commission’s goal of distinguishing rural carriers—namely, small carriers serving fewer subscribers, in more sparsely populated areas, that do not generally benefit from economies of scale and scope. Since the geographic area covered by a carrier’s facilities indicates whether the carrier benefits from economies of scale and scope, carriers should use Census Bureau data that reflects this area. If no appropriate Census Bureau data is

¹ Comments of the Rural Telephone Coalition at 9-12.

² Comments of Citizens Communications at 3-5.

available, then carriers should be able to use any verifiable estimate of population that reflects the geographic area served by a carrier's facilities.

TXU Communications urges the Commission not to mandate the GTE³ methodology for determining communities of more than 50,000 because it appears to impose conditions not required by the Act. As TXU Communications understands the GTE methodology, carriers would first be required to determine whether specific wire centers are in "rural" areas based on whether the wire center falls within an MSA or has "rural pockets" as determined by the most recent Goldsmith modifications. Then, after each wire center's lines are classified as either urban or rural, the sum of urban lines divided by the total study area lines determines the percent of urban lines. Section 153(37)(D), however, does not require a determination of whether lines are in areas classified as "rural." Moreover, as demonstrated by TXU Communications in its comments, an MSA or an area defined as a "rural area" may not accurately reflect the area covered by a carrier's facilities if, for example, a carrier only serves a portion of those areas. Rather, since the area served by a carrier's facilities best indicates whether a carrier can benefit from economies of scale and scope, the "community" should be based on that area.

III. RURAL TELEPHONE COMPANY DEFINITION AND RE-CERTIFICATION

The comments overwhelmingly support the use of the Section 153(37) "rural telephone company" definition to distinguish between rural and non-rural carriers for universal service purposes. As demonstrated by the comments of TXU Communications and others, the use of this definition comports with the Act's method for distinguishing between rural and non-rural carriers for competitive and universal service purposes and it reflects the relationship between

universal service and competition. In addition, TXU Communications agrees with those commenters who argue that changing the definition at this late stage in the proceeding could be detrimental to carriers that relied on the “rural telephone company” definition when executing business plans or when making the decision to refrain from commenting on the cost model for non-rural carriers. As stated by the RTC, the Commission should not now change the definition as a matter of fairness to carriers that have been relying on the current definition.

Finally, the comments overwhelmingly support the Commission’s proposal to require carriers to re-certify their status as “rural” only if there is a change in the carrier’s status. As demonstrated, filings on a more frequent basis impose unnecessary costs on carriers and serve no useful purpose.

IV. CONCLUSION

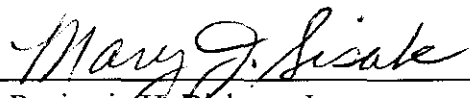
Based on the foregoing and on its comments, TXU Communications respectfully requests that the Commission adopt the definitions of “communities of more than 50,000” and of “local exchange carrier operating entity” as proposed by TXU Communications. TXU

³ Comments of GTE Service Corporation and Its Affiliated Domestic Telephone Operating Companies in Response to Further Notice of Proposed Rulemaking (GTE) at 94-96.

Communications also urges the Commission to continue to use the rural telephone company definition to distinguish between rural and non-rural carriers and to only require re-certification of a carrier's rural status when there has been a change in the carrier's status.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Vera P. Morris, do hereby certify that on this 6th day of August, 1999, a copy of the foregoing Reply Comments of TXU Communications Telephone Company was mailed by first class United States mail, postage prepaid, to the parties listed below:

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